

LFC Requester:	
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**AGENCY BILL ANALYSIS
2026 REGULAR SESSION**

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{Analysis must be uploaded as a PDF}

SECTION I: GENERAL INFORMATION

{Indicate if analysis is on an original bill, amendment, substitute or a correction of a previous bill}

Check all that apply:

Original **Amendment**
Correction **Substitute**

Date 1/23/26
Bill No: HB 84-280

Sponsor: Rep. Armstrong
Short Title: Exposure to Certain Drugs as Child Abuse

Agency Name and Code LOPD 280
Number: _____
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SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY25	FY26		

(Parenthesis () Indicate Expenditure Decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY25	FY26	FY27		

(Parenthesis () Indicate Expenditure Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY25	FY26	FY27	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total	\$0	\$1,645.5	\$1,645.5	\$3,291.0	Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

SECTION III: NARRATIVE

BILL SUMMARY

Synopsis: HB 84 proposes to amend the child abuse statute, NMSA 1978, Section 30-6-1, to include the use of Schedule I or II controlled substances by a pregnant person, if the person knows she is pregnant and the child “tests positive” for the substance at birth. There would be an exception for “a person who lawfully uses a Schedule II controlled substance.”

HB 84 would expand what is now Section 30-6-1(J), which says that evidence that a child has been knowingly and intentionally exposed to the use of methamphetamine constitutes prima facie evidence of child abuse. The bill would add fentanyl to that provision and treat knowing and intentional exposure to fentanyl use as prima facie evidence of child abuse.

Section 6 of the bill would amend NMSA 1978, Section 32A-4-3, the statute mandating reporting of child abuse, to **remove** language stating that drug use by a pregnant woman does not alone form a sufficient basis to report child abuse or neglect. That would be replaced by language saying, “Unless a toxicology screen of a newborn is positive for methamphetamine, fentanyl, cocaine or heroin, a finding that a newborn was exposed to a substance other than methamphetamine, fentanyl, cocaine or heroin” is not alone a basis to report child abuse.

There are several provisions that do not relate to criminal law and which this analysis therefore does not address in detail. The bill would define the term “newborn” to mean a child less than 72 hours old, and it would replace “child” with “newborn” in several statutes. Section 7 of the bill would create a new statute allowing law enforcement to take newborn children into temporary protective custody without a court order.

FISCAL IMPLICATIONS

This bill proposes to expand the definition of child abuse, which would result in more felony prosecutions. However, initial cases are certain to trigger constitutional challenge, so in addition to individual case defenses, the bill is likely to require motion hearings and appellate litigation until those issues are resolved with binding precedent. (*See significant issues section below.*)

Analyst does not have access to data that would inform a comprehensive estimate of how many new prosecutions this bill would generate statewide, but without any threshold quantity of drugs detected or requirement that the amount be medically harmful– the number could be exceedingly high. A November 24, 2025, Searchlight NM story, however, has highlighted that over 100 babies exposed to illegal substances at birth had been taken into custody by CYFD. All hospital

and medical staff are mandatory reporters of child abuse, so that the expanded definition of *criminal* abuse would result in every instance of positive drug tests in newborns *also* being referred for prosecution.

In 2025, there were 1,117 LOPD cases where child abuse of any kind was the most serious charge. There are other cases where child abuse was among the charges that are not captured here. Child abuse cases that go to trial represented by an in-house attorney take an average 281 hours of attorney time, or \$13.2 thousand, per case. An additional 80 of these cases per year would cost LOPD \$1 million per year,. This estimate is likely conservative, based on the reported 100 babies taken into custody as reported by Searchlight NM. If experts are needed, the costs increase. Depending on the case, experts can cost anywhere from \$5,000 to more than \$15,000 per case. If only 15 of these cases had expert witness approved, the cost could be around \$150,000 per year, a conservative estimate. For contract attorneys, these cases would also easily qualify for complex case litigation hourly rates. One of these cases represented by a contract attorney paid under complex case litigation rate of \$85/hour could cost \$24 thousand. If contract attorneys represented half of the 80-case estimate used in this analysis, the costs could be \$967 thousand per year.

Engaging in additional and more complicated litigation could require additional funding for LOPD in order to protect the Sixth Amendment rights of defendants. A recent workload study by an independent organization and the American Bar Association concluded that New Mexico faces a critical shortage of public defense attorneys. The study concluded, “A very conservative analysis shows that based on average annual caseload, the state needs an additional 602 full-time attorneys – more than twice its current level - to meet the standard of reasonably effective assistance of counsel guaranteed by the Sixth Amendment.”

https://www.americanbar.org/content/dam/aba/administrative/legal_aid_indigent_defendants/lsc-laid-moss-adams-nm-proj.pdf

SIGNIFICANT ISSUES

HB 84 is similar to prior legislation, including 2025’s HB 303, Exposure to Certain Drugs as Child Abuse, and 2023’s HB 221, Exposure of Children to Certain Drugs. The 2025 bill received a Do Pass from one committee with amendments, and then died without being heard by any other committee.

This bill proposes to allow prosecutions for child abuse based on a pregnant person’s own use of a controlled substance during pregnancy. The New Mexico Court of Appeals addressed this exact issue in *State v. Martinez*, 2006-NMCA-068, 139 N.M. 741, 137 P.3d 1195. There, the Court held that a “child” for purposes of the child abuse statute is a “person” under the age of eighteen, and a fetus is not a “person” under New Mexico law. *Id.* ¶¶ 6-9. *See also State v. Willis*, 1982-NMCA-151, 98 N.M. 771, 652 P.2d 1222 (holding that an unborn fetus is not a “human being” within the meaning of the vehicular homicide statute). Analyst further presents concerns regarding the breadth of this legislation, as it appears to establish a third-degree felony every time an infant “tests positive,” without any minimal drug concentration requirement or corresponding evidence that the levels detected would be *harmful* to an infant.

As noted above, cases in which a newborn child tests positive for drugs are *already* referred to CYFD for possible intervention. If each of those mothers was subject to felony prosecution, it would create significant, and possibly insurmountable barriers to the mother being eligible to raise her new child, even when doctors and CYFD find that she is not a further risk to the child’s

health, especially when felony prosecutions can take many months, if not years, to resolve and even the lowest level child abuse conviction carries three years in prison.

Imposing criminal penalties on mothers whose newborns test positive for drugs has been widely criticized. The organization Pregnancy Justice has noted that clinical drug tests often result in false positives, and the threat of prosecution can deter pregnant people with substance abuse disorders from seeking medical care. *See* Pregnancy Justice, *Clinical Drug Testing of Pregnant People and Newborns* (2024), available at <https://www.pregnancyjusticeus.org/resources/clinical-drug-testing/>. According to the American College of Obstetricians and Gynecologists, “Clear evidence exists that criminalization and incarceration for substance use disorder during pregnancy are ineffective as behavioral deterrents and harmful to the health of the pregnant person and their infant.” American College of Obstetricians & Gynecologists, *Opposition to Criminalization of Individuals During Pregnancy and the Postpartum Period* (2024), <https://www.acog.org/clinical-information/policy-and-position-statements/statements-of-policy/2020/opposition-criminalization-of-individuals-pregnancy-and-postpartum-period>.

The removal of the language in Section 32A-4-3(G), which currently states that use of drugs by a pregnant woman is not a sufficient basis for reporting child abuse, would likely further deter pregnant people with substance abuse problems (or who use controlled substances under another doctor’s care) from seeking medical care.

The expansion of Section 30-6-1(J), which would treat knowing and intentional exposure of a child to fentanyl as prima facie evidence of child abuse, does not raise the same constitutional or public health concerns as the criminalization of drug use by pregnant women. That said, it is unnecessary. Under current law, adults can be prosecuted for child abuse if they expose children to controlled substances, even without the specialized presumption in Section 30-6-1(J). *See, e.g., State v. Graham*, 2005-NMSC-004, 137 N.M. 197, 109 P.3d 285 (upholding a conviction for child abuse where toddlers lived in a house with crack cocaine and marijuana, and the marijuana was in areas accessible to the children). It is not non-criminal now, it simply requires a case-specific determination that the drug use endangered the now-born child.

Additionally, the bill would define a “newborn” as a child under 72 hours old, and it would substitute “newborn” for “child” in some existing statutory provisions. The change seems unnecessary, and it has the potential to cause confusion. For example, Section 3 of the bill would amend Section 32A-3A-13(B)(1) from requiring development of a plan of safe care “prior to a substance-exposed child’s discharge from a hospital” to “prior to a substance-exposed newborn’s discharge from a hospital.” Would this mean that the law would no longer apply to a child who was discharged four days after birth? Analyst recommends leaving “newborn” undefined to be given its plain meaning as may be appropriate in different legal contexts.

PERFORMANCE IMPLICATIONS

ADMINISTRATIVE IMPLICATIONS

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

TECHNICAL ISSUES

Analyst is unaware whether this legislation is germane under Art. IV, Section 5. It is not a budget bill and analyst is unaware that it has been drawn pursuant to a special message of the Governor.

OTHER SUBSTANTIVE ISSUES

ALTERNATIVES

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

AMENDMENTS